



Comptroller General
of the United States
Washington, D.C. 20548

145946

Decision

Matter of: Olympic Marine Services, Inc.

File: B-246143; B-246146; B-246181

Date: February 19, 1992

Anastasios Emmanuelidis for the protester.
Joe S. Macey, Esq., Department of Transportation, for the agency.
Charles W. Morrow, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Procuring agency failed to obtain maximum competition practicable for diesel engine repair work, which was solicited from a limited number of sources, but not the protester, based upon an unusual and compelling urgency, where the record shows that the procuring agency should have been aware that the protester was a potential source due to its recent performance of similar repair services and specific requests to be solicited for ship repair work in the area.

DECISION

Olympic Marine Services, Inc. protests against allegedly discriminatory procurement actions of the Department of Transportation, Maritime Administration (MARAD), in soliciting and awarding certain maintenance and repair contracts involving ready reserve fleet (RRF) vessels in the Hampton Roads, Virginia area. Olympic maintains that MARAD improperly failed to solicit Olympic for recent repair work on the Diamond State and the Cape Ducato vessels, and that MARAD generally has engaged in practices that prevent Olympic from competing for ship repair work in the Hampton Roads, Virginia, area.

We dismiss Olympic's protest concerning the Diamond State and sustain Olympic's protest concerning the Cape Ducato.¹

¹Olympic's protest that MARAD generally fails to solicit Olympic for its ship repair contracts in the Hampton Roads area is dismissed as it does not concern a particular solicitation. 4 C.F.R. §§ 21.1(a), (c)(3).

MARAD is responsible for maintaining the government-owned RRF vessels. During the recent "Desert Storm" campaign in the Persian Gulf, more than 70 of these ships were assigned to transport military cargo to the area. These ships are operated by and for the government by private corporations, either under a "General Agency Agreement" in which a corporation is an agent of the government, or under a ship manager's contract in which a corporation is an agent/independent contractor. Interocean Management Corporation (IOM) operates the Diamond State under an agency agreement and acts as the ship manager for the Cape Ducato.

Regarding the Diamond State, Olympic alleges that, as the ship agent for MARAD, IOM awarded what it believed to be a contract for general ship repair to Moon Engineering, Inc. This allegation is based upon Olympic's observing the ship berthed at the Moon docking facility in Portsmouth, Virginia, on September 30. While MARAD confirms that the ship was docked at Moon's facility on that date, this was the result of a small purchase order issued to Crofton Diving Corporation for a damage survey of the hull of the Diamond State.² Crofton elected to use the Moon facility for the survey and the repair work was ultimately performed at the only facility capable of performing the work in Baltimore, Maryland.

MARAD states that Olympic was not solicited for the Diamond State survey because it is not in the underwater survey business. Olympic neither disputes MARAD's position regarding its lack of underwater surveying capability, nor contends that it could perform the particular repair work. Therefore, Olympic's protest, based on its misconception of the purpose of the Diamond State's presence at Moon's facility, is dismissed.

With respect to the Cape Ducato,³ MARAD reports that the Cape Ducato's main engine malfunctioned, and the Military Sealift Command (MSC) requested MARAD to complete repairs on the Cape Ducato within a 21-day period due to an urgent need for the vessel to move military vehicles to the Middle East. In response to MSC's request, MARAD through IOM solicited proposals from six sources in the Hampton Roads area, which MARAD said were known to possess experience in large, medium speed diesel engine repair. IOM conducted the procurement

²The Diamond State is a crane ship used to load and offload containerized cargo from container ships which have no crane.

³The Cape Ducato is a roll-on/roll-off vessel used for transporting tanks, trucks, and jeeps, which allows the vehicles to be driven directly on to the vessel.

for MARAD using noncompetitive procedures pursuant to the authority of 41 U.S.C. § 253(c) (1988) and Federal Acquisition Regulation § 6.302-2. On September 13, IOM on behalf of MARAD awarded a contract to Phillyship at an estimated cost of \$975,000.

Under 41 U.S.C. § 253(c), an agency may use other than fully competitive procedures where the agency's need for property or services is of such an unusual and compelling urgency that the government would be seriously injured unless the agency is permitted to limit the number of sources from which it solicits bids or proposals. Where a contracting agency is authorized to conduct procurements with less than fully competitive procedures, 41 U.S.C. § 253(e) requires that the agency request offers from as many potential sources as is practicable under the circumstances. Bay Cities Servs., Inc., 70 Comp. Gen. 4 (1990), 90-2 CPD ¶ 271. We have sustained challenges to such limited competitions where the existence and capability of an excluded potential source was clearly known to agency contracting officials by virtue of the source's prior performance of the same services, and the agency did not adequately justify the source's exclusion from the competition. Id.; Earth Prop. Servs., Inc., B-237742, Mar. 14, 1990, 90-1 CPD ¶ 273; Fairchild Weston Sys., Inc., B-225649, May 6, 1987, 87-1 CPD ¶ 479; see also Hershey Indus., Inc., B-245328, Dec. 17, 1991, 91-2 CPD ¶ 551.

MARAD contends that Olympic was not solicited because it "is not known for its diesel engine repair capabilities." MARAD argues that IOM's actions were reasonable because it solicited the six companies which IOM believed could repair the engines in the required time.⁴

In response to this contention, Olympic asserts that MARAD and IOM were fully aware of its capabilities because in the winter of 1989-1990, Olympic successfully completed a contract with MARAD for the overhaul of four auxiliary diesel engines on the Cape Hudson.⁵ Further, Olympic states that an IOM official personally toured Olympic's facilities shortly before the issuance of this solicitation,

⁴Olympic specifically disputes whether some of the solicited firms are actually noted for diesel engine repair and whether any of these companies has performed a ship repair contract with MARAD in the Hampton Roads area.

⁵Olympic argues that MARAD knew that it was capable of diesel engine repair as well because at the time the Cape Ducato repairs were procured Olympic had filed suit for additional compensation for the Cape Hudson work. This claim was recently settled with Olympic.

and that as part of the tour, the official was shown and informed of then current Olympic repair work on the U.S. Navy tug YTB 752 in which the major task was the overhaul of the main diesel engine. Additionally, Olympic states that throughout the past summer it personally communicated with the IOM contracting officer, who authorized the Cape Ducato repair work, regarding Olympic's capabilities and desire to perform diesel engine repair work.

As further evidence of MARAD's and IOM's awareness of its capabilities and interest, Olympic has provided a copy of a recent letter dated September 9 to IOM regarding Olympic's new facilities. By letter dated May 21, 1991, to the contracting officer who ordered the Cape Ducato work, with copies to cognizant MARAD officials, Olympic questioned IOM's and MARAD's failure to solicit Olympic for certain ship repair work and requested that it be solicited for all such work in the Hampton Roads area. Finally, as part of a protest⁶ filed in March 1991 by Olympic against a MARAD ship repair procurement in the Hampton Roads area, from which Olympic alleged that it had been improperly excluded, Olympic, by letter dated April 11, 1991, requested MARAD that it be solicited for any future work to be performed on RRF vessels in the Hampton Roads area.

MARAD does not deny that Olympic has diesel engine repair capabilities. Nor has MARAD provided a reasonable explanation why it or IOM were unaware of Olympic's capabilities and interest in this work. In view of the circumstances surrounding the procurement, we find that MARAD and IOM knew or should have known of Olympic's interest in competing for ship repair work in the Hampton Roads area and of its experience in diesel engine repair work on ships for MARAD in the recent past. We do not find reasonable MARAD's contention that Olympic was not solicited because it was not known for diesel repair work, given Olympic's prior diesel repair contract with MARAD and its specific request to be solicited on all ship repair contracts in the Hampton Roads area. Thus, we find the failure to solicit Olympic violated the statutory requirement in 41 U.S.C. § 253(e) to solicit offers from as many sources as practicable when using other than competitive procedures. Fairchild Weston Sys., Inc., supra; cf. Servrite Int'l Ltd., B-236606, Dec. 6, 1989, 89-2 CPD ¶ 520 (protest was denied where the agency chose not to solicit the protester because it reasonably found that the protester lacked the capability to timely perform the solicited work).

⁶This protest, B-243397, was dismissed as academic after MARAD admitted denying Olympic the opportunity to submit a proposal and it advised this Office of its intention to cancel that procurement and solicit Olympic.

Since the procurement involved an urgent requirement with a 21-day period of performance, the work is complete and no corrective action on this procurement can be taken. Olympic, however, is entitled to recover the costs of filing and pursuing the protest of the Cape Ducato procurement, 4 C.F.R. § 21.6(d)(1) (1991). Olympic should submit its certified claim for its protest costs directly to the agency within 60 working days of receipt of this decision. 56 Fed. Reg. 3759 (1991) (to be codified at 4 C.F.R. § 21.6(f)(1)).

for Milton J. Dowd
Comptroller General
of the United States